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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,607	10/27/2003	Brian E. Le Gette	0100.0020C1	6475
27896	7590	05/14/2009		
EDEL, SHAPIRO & FINNAN, LLC				
1901 RESEARCH BOULEVARD				
SUITE 400				
ROCKVILLE, MD 20850				
EXAMINER				
SUTTON, ANDREW W				
ART UNIT		PAPER NUMBER		
3765				
NOTIFICATION DATE		DELIVERY MODE		
05/14/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

epatent@usiplaw.com

Office Action Summary

Application No.

10/693,607

Applicant(s)

LE GETTE ET AL.

Examiner

ANDREW W. SUTTON

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-11, 13-17 and 43-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-11, 13-17 and 43-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 9/22/08 (2).
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 9/22/08 have been fully considered but they are not persuasive. The applicant amended the claims to include the limitation that the first and second axis extends along the ear portion. The applicant argues that this overcomes the prior art. The examiner disagrees as the axis passes through the ear portion, therefore is extending along the ear portion.

Specification

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 103

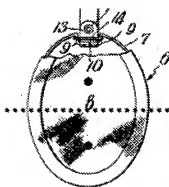
The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

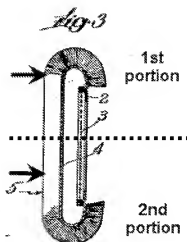
Claims 9-11, 14-17, 43-45, 47-53, and 55-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bean (US 2,149,383). Bean illustrates in Figs. 1-5 an ear warmer frame including a band portion 18 and an ear portion 7. The ear portion 7 is

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has an elliptical shape as shown below. Since the ear portion has an elliptical shape, it is inherent that the elliptical shape has two perpendicular axes as claimed. These two axes are shown as the dots above and below the dotted line. The line below divides the ear portion in half and shows the first portion (above the line) and a second portion (below the line) that are each curved around the first and second axes. Since there is no straight portion, to break up the first and second portion, the examiner feels that the ear portion is made entirely of the first and second portion thus means the claimed limitations.



As to the limitation to the thickness, Bean illustrates a first and second portion as illustrated below with the thickness of the arrow at the first portion being thinner than the thickness of the second portion at the arrow in the second portion.



As to claim 10, 44, 52, Bean illustrates in Fig. 5 a band portion 17 including a first and second member, first member of the band portion has a first end portion and a second end portion, the second end portion of the first member is slidably coupled 20 to the second member of the band portion, the ear portion 5 coupled proximate to the first end portion of the first member of the band portion.

As to claim 11, 45, 53, Bean illustrates in Fig. 4 as shown above an ear portion 7 that tapers from the bottom of the first portion (at the dividing line) to the second portion (bottom half of the frame 7).

As to claim 14, 47, 55, Bean illustrates in Fig. 4 a projection 10 extending in the ear portion that includes a wire 9 located in the projection.

As to claim 15, 48, 56, Bean illustrates in Fig. 5 the frame 6 being disposed within a shell 5.

As to claim 16-17, 49-50, and 57-58, Bean teaches the ear portion having a first portion and the second portion that make up the entire of the ear portion and therefore have a sum made of at least $\frac{3}{4}$ ths the length.

Claims 13, 46, and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bean (US 2,149,383) in view of Bavetta (US 6,499,146). Bean teaches a band with two coupled members that are capable of sliding as discussed above. However Bean does not teach the use of a plurality of recesses to engage the first end of the second member. Bavetta illustrates (Fig. 4A) the use of a band including a first member 210 with an outer surface including a plurality of recesses to engage the second member 200. It would have been obvious to one of ordinary skill in the art to combine the teachings of Bean and Bavetta to provide a band with a more rigid connection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW W. SUTTON whose telephone number is (571)272-6093. The examiner can normally be reached on Monday - Thursday 8:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary L. Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AWS
10 May 2009

/Gary L. Welch/

Supervisory Patent Examiner, Art Unit 3765